IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

TUESDAY, THE 24TH JULY 2007 / 2ND SRAVANA 1929

OP.No. 9859 of 1996(W)

PETITIONER:

M.V.J. FOODS (INDIA) PVT. LTD.,
EXPRESS HOUSE, 2ND FLOOR,
KALOOR, COCHIN 682 016,
REPRESENTED BY ITS NOMINEE, SANTHOSH KUMAR.

BY ADV. SRI.K.JAJU BABU

RESPONDENTS:
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1. UNION OF INDIA REPRESENTED BY THE DIRECTOR GENERAL OF HEALTH SERGFVICES, MINISTRY OF HEALTH & FAMILY WELFARE, NEW DELHI.

2. THE SECRETARY, CENTRAL COMMITTEE OF FOOD STANDARDS, MINISTRY OF HEATLH & FAMILY WELFARE, NEW DELHI.

3. THE DIRECTOR OF FRUITS AND VEGETABLE PRESERVATIONS, MINISTRY OF FOOD PROCESSING, NEW DELHI.

4. STATE OF KERALA REPRESENTED BY THE CHIEF SECRETARY, SECRETARIATE, THIRUVANTHAPURAM.

5. THE FOOD INSPECTOR, CHALAKKUDY MUNICIPALITYL, CHALAKUDY.

6. THE FOOD INSPECTOR, MOBILE VIGILANCE SQUAD, KOZHIKODE.

R1 TO R3 BY ADV. SRI.GEORGE C.P.THARAKAN
R4, 5 & 6 BY SENIOR GOVERNMENT PLEADER SMT. MEERA.
BY SRI.P.SANTHALINGAM

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 24/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS -

P1 - COPY OF AGREEMENT DT.30.8.94 BETWEEN THE PETITIONER AND PRIYADARSHINI FRUIT PRODUCTS.

P2 - COPY OF RELEVANT EXTRACT OF ENTRY IN FRUIT PRODUCTS ORDER 1955.

P3 - COPY OF CLASSSIFIED ADVERTISEMENT BY THE TECHNOLOGY MISSION ON OIL SEEDS.

P4 - COPY OF REPRESENTATION BY KERALA STATE WOMEN'S INDUSTRIES ASSOCIATION, KALOOR BEFORE R1 ON 16.5.95.

P5 - COPY OF LETTER DT. 9.5.95 OF MRS.RACHEL MUTHACHAN ADDRESSED TO R1.

P6 - COPY OF REPRESENTATION OF SMT. THANGAM E. PHILIP DT. 3.5.95 TO R1.

P7 - COPY OF MINUTES OF 38TH MEETING OF CENTRAL COMMITTEE FOR FOOD STANDARDS.

P8 - COPY OF LETTER NO.22/3/93-P&VP OF THE DIRECTOR (F&VP) ADDRESSED TO R1.

P9 - COPY OF LETTER NO.P.15025/67/88-PH(F&N) DT. 26.10.93 OF R1 TO THE MANAGING PARTNER, MALABAR COAST PRODUCTS, KOTTAYAM.

P10 - COPY OF REPORT OF PUBLIC ANALYST VIDE NO.PFA-214/95 DT.16.6.96.

P11 - COPY OF SUMMONS ISSUED TO THE PETITIONER IN STC 2854/95, JFCM, THALASSERY.

P12 - COPY OF SUMMONS ISSUED TO THE PETITIONER IN ST 484/96 OF JFCM, CHALAKKUDY.

P13 - COPY OF ORDER DT. 7.5.96 IN CMP 13038/96 IN OP 7705/96 OF THE HIGH COURT OF KERALA.

H.L. DATTU, C.J. & K.T. SANKARAN, J.

O.P.No.9859 of 1996

Dated, this the 24th day of July, 2007

JUDGMENT

H.L. DATTU, CJ.

In this original petition, the petitioner seeks for the following reliefs. They are as under:

(i) declare that clause A.16.16 in Appendix B to the Prevention of Food Adulteration Rules in so far as it prescribes that there should be an oil layer of 0.5 cm above the contents of that the percentage of oil in pickle shall not be less than 10% is ultra vires Section 2(1-A)(k) of the Act and therefore invalid, inoperative and unenforceable,

(ii) declare that clause A.16.16 in Appendix B to the Prevention of Food Adulteration Rules in so far as it prescribes that there should be an oil layer of 0.5 cm above the contents or that the percentage of oil in pickle shall not be less than 10% is ultra vires the rule making authority of the Central Government under Section 23(1-A)(i) of the Prevention of Food Adulteration Act, 1954,

(iii) declare that the said provision is invalid and unenforceable for the said reason.

(iv) issue a writ of certiorari or any other appropriate writ, order or direction, quashing all proceedings in S.T.No.484/96 on the file of the First Class Judicial Magistrate Court at Chalakkudy and S.T.No.2854/95 on the file of the Judicial First Class Magistrate at Thalassery.

(v) to stay all further proceedings in S.T.No.484/96 on the file of the First Class Judicial Magistrate Court at Chalakkudy and S.T.No.2854/95 on the file of the Judicial First Class Magistrate at Thalassery pending disposal of the Original Petition.

(vi) such other appropriate writ, order or direction as this Honourable Court may deem fit and proper in the circumstances of the case, and

(vii) award costs."

2. The issues raised in this writ petition are identical with the issues raised and considered by this Court in the case of *Malabar Food Processors Private Ltd. v. Union of India and others* in O.P.No.15462 of 1995 disposed of on 10th February, 2006. Following the observations made in the aforesaid decision, this original petition is also disposed of in the same terms, observations, conditions and directions.

3. In view of the order passed in the writ petition, the reliefs sought for in C.M.P. Nos.16859/96, 9076/98, 17865/98 and 17866/98 need not be considered by this court. Accordingly, the said C.M.Ps. are rejected.

Ordered accordingly.

H.L. DATTU,
CHIEF JUSTICE.

K.T. SANKARAN,
JUDGE.

mt/

H.L. DATTU, C.J. &
K.T. SANKARAN, J.

O.P.No.9859 of 1996

JUDGMENT

24.7.2007